

REMARKS

In the Final Office Action mailed June 9, 2010, claims 1-4, 6-8 and 10-36 were pending and indicated as rejected.

By this response, claim 1 has been amended. Specifically, the phrase “a chemical intermediate” has been deleted. No statutory new matter is present. Support for all amendments can be found in the original specification.

A Request for Continued Examination along with the requisite fee accompany this response.

The Claimed Invention

Regarding independent claim 1, a granular adsorbate comprises a substance such as a foodstuff additive, a feedstuff additive and a plant protection agent that is adsorbed onto a granular carrier. The characteristics of flow rating, slope angle and bulk density of the granular adsorbate are described in the “Results” section of the specification.

Claim Rejections under 35 U.S.C. § 103(a)

I. Claims 1-2, 4, 6-8, 10-14, 20, 26-27 and 32-36 stand rejected as being unpatentable over Roman (US 6,171,602) in view of Deller et al. (US 5,776,240), Hasenzahl et al. (WO 03/037379) and the Degussa Press Release titled “Dry Binder – A New Concept for Pressed Powder,”. The rejection as to claims 1-2, 4, 6-8, 10-14, 20, 26-27 and 32-36 is respectfully traversed.

Applicants submit that the motivation necessary to combine Roman and Deller is absent. Roman has been characterized by the Examiner as suggesting silanized porous silica granules used as carriers of various foodstuff additives. It would appear that Roman is directed to a cosmetic composition. A natural pigment in a hydroalcoholic base is added to a dry absorbent base. Useful absorbent materials include porous spherical silica materials. Free flowing is a characteristic of the adsorbed pigment composition. The characterization of the preferred silica beads does not describe the silica as pyrogenic or granular like that claimed.

It is clear that the Roman product is not a plant protecting agent, food stuff or a feed stuff. It does not function as a chemical intermediate as understood by reading Applicants' specification. The secondary references do not suggest such a possible application for it.

Deller et al. (US 5,776,240), Hasenzahl et al. (WO 03/037379) and the Degussa Press Release do teach a granular pyrogenic silica like that claimed though for different applications. None are as a feed stuff, food stuff or plant protection agent.

The description of the silica provided in Roman is not sufficient to allow one to equate it with the granular products taught by Deller et al. (US 5,776,240), Hasenzahl et al. (WO 03/037379) and the Degussa Press Release.

Accordingly, as proposed in the Office Action, the rejection appears to be an "obvious to try" type, both as to the Roman product's use as a food stuff and as to the substitution of Deller et al. (US 5,776,240), Hasenzahl et al. (WO 03/037379) or Degussa Press Release granular silica for that taught by Roman.

Deller suggests the use of its granular pyrogenic silica as a catalytic support. Hazenzahl suggests the use of its granular silica product as a pharmaceutical carrier. The Degussa Press Release suggests the use of its granular pyrogenic silica product to adsorb a binder which can be released later, when the product is subjected to pressure.

A recent BPAI decision in a granular silica application suggests the need for an equivalency teaching in the substitution of one silica type for another. See BPAI opinion number 2009-009246 for Application No. 10/281,223, enclosed.

It is not seen that a proper *prima facie* case of obviousness has been established.

Applicants also submit that the Press Release may not, on its face, be a proper reference. It is not clear that the reference was publically available prior to the earliest priority date claimed. A date of June 12, 2003, is provided in the caption for the Press Release. However, this date is not a date of publication. It may be that it references the date when the document was released within the corporation. Clarification is requested. It appears that the document was obtained from an internet source at a later date. Evidence is needed to substantiate the Examiner's position regarding the availability of the Press Release of June 12, 2003, which is before the priority date claimed.

Next, Applicants contend that the results obtained from their claimed granular adsorbate is critical in view of the cited art. See, for example, the “Results” section describing flow rating, slope angle and bulk density values. The cited art does not suggest Applicants’ values. Thus, amended claim 1 would not have been considered *prima facie* obvious in light of the cited art.

Accordingly, it is submitted that amended claim 1 patentably distinguishes over the applied art. In view of the foregoing, Applicants earnestly request withdrawal of the rejection as to amended claim 1 and claims 2, 4, 6-8, 10-14, 20, 26-27 and 32-36, dependent thereon.

II. Claims 1, 3, 28 and 30-31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Minemoto (JP 02049707) in view of Deller et al., Hasenzahl, and the Press Release. The rejection as to claims 1, 3, 28 and 30-31 is respectfully traversed.

Minemoto teaches a boron compound (insecticide) carried on porous grains. The grains may be silica, silicalumina or alumin and a FeFef spherical silica. There is not enough information provided in the abstract to suggest it is granular silica like that claimed.

Deller et al., Hasenzahl, and the Press Release are discussed above.

There is no equivalency teaching provided that suggests the silica taught (The abstract suggests silica as one of four possible selections.) by Minemoto is similar or equivalent to the claimed granular pyrogenic silica material.

As presented in the Office Action, it appears that the rationale actually provided is akin to an obvious to try rationale both as to the selection of silica as the carrier and as to the selection of the claimed granular product.

None of the secondary references teach the use of the granular pyrogenic silica in the context of a plant protecting agent, *e.g.* insecticide. Consider the BPAI decision, *supra*.

Again, should the Examiner consider a proper *prima facie* case to have been established, it is respectfully requested that the results disclosed in the specification are not suggested by the art of record and therefore are unexpected. The *prima facie* case should then be considered rebutted.

Thus, amended claim 1 patentably distinguishes thereover. Accordingly, Applicants courteously solicit withdrawal of the rejection as to amended claim 1 and claims 2-3, 28 and 30-31, dependent thereon.

III. Claims 1, 19, 21, 29 and 34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Park et al. (US 5,654,258) in view of Deller et al., Hazenzahl and the Press Release. The rejection as to claims 1, 19, 21, 29 and 34 is traversed.

Park et al. teaches a solid, water dispersible, storage stable trifluralin formulation. The trifluralin is supported inside porous, finely divided carrier particles. Suitable carrier particles are described as being silica particles having a surface area of 150 to 250 m²/g and having an absorbed water content of 2 to 12%, preferably 3 to 6% before loading of the trifluralin. H151L257 is identified as the silica used in the examples. H151L257 is a synthetic precipitated silica of a surface area 190-210 sq. meters manufactured by PPG (Taiwan). This silica is not a pyrogenic silica nor is it like the claimed granular pyrogenic silica. Other silica types are mentioned in col.12. None are mentioned as being pyrogenic silica. All appear to be precipitated silicas.

Deller et al., Hazenzahl and the Press Release are discussed above. None teach a herbicide application. The silicas of the primary reference are recognized in the art as being distinct from the precipitated Park et al. silicas.

In the absence of a teaching of equivalency, the rationale provided in the Office Action appears to be based on an obvious to try rationale. Such a rationale ignores the results shown in the specification which are improvements not suggested by the art of record as possible.

There is no problem apparent in the primary reference for which the secondary references suggest a solution. Accordingly, it is not clear why the references would be combined.

Applicants courteously solicit withdrawal of the rejection as to amended claim 1 and claims 19, 21, 29 and 34, dependent thereon.

IV. Claims 1, 15-18, and 22-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Peterson et al. (US 6,004,584) in view of Deller et al. (US 5,776,240) and the Degussa press release titled “Dry Binder – A New Concept for Pressed Powders” (June 12, 2003). The rejection as to claims 1, 15-18 and 22-23 is respectfully traversed.

Peterson et al. teaches highly absorbent body powders. These powders do not appear to be feedstuffs, foodstuffs, or plant protection agents as required by the claims. There is clearly no indication of a composition containing a chemical intermediate as understood in the art.

Silicates including Aerosil® and Cab-OSil® here are mentioned in col. 3. as absorbents (the “active” ingredient.) Powder carriers are mentioned starting in col. 3 at line 44. None are silica of any type.

Deller et al., Hazenzahl and the Press Release teach the claimed granular pyrogenic silica as carriers.

The carriers of Peterson et al. appear to be, for the most part, carbohydrate based.

It would appear that the rejection as posited presumes that it would be obvious to try the Peterson composition in the context of a feedstuff, foodstuff or as a plant protection agent and to substitute the carriers taught by Deller et al., Hazenzahl and the Press Release for those taught by Peterson et al. This makes no sense. There is no equivalency teaching.

Applicants submit that Peterson also is not combinable with the Press Release. As provided in section I, there is no evidence to establish similar properties between the granules of Peterson and those of the Press Release relating to cosmetic applications. Applicants refer to their arguments provided in section I, *supra*, concerning their critical results and the validity of the prior art date of the Press Release.

Thus, amended claim 1 patentably distinguishes thereover. Accordingly, Applicants courteously solicit withdrawal of the rejection as to amended claim 1 and claims 15-18 and 22-23, dependent thereon.

V. Claims 1 and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Technical Bulletin Pigments No. 31 (Degussa AG, November 1995) in view of Deller et al., Hazenzahl and the Press Release. The rejection as to claims 1 and 24 is traversed.

Applicants submit the motivation necessary to combine The Technical Bulletin and Deller is absent.

The Technical Bulletin has been characterized by the Examiner as suggesting a silanized silica useful as an adsorbate for molasses in order to make a free-flowing binder.

A fair reading of Deller suggest that its granules of silicon dioxide can be used as a support for a catalytically active substance capable of polymerizing ethylene to form polyethylene. A fair reading of Hazenzahl suggest the use of the claimed granular silica as a pharmaceutical carrier. A fair reading of the Press release suggests the release of binder from the claimed binder impregnated granular pyrogenic silica is possible when pressure is applied. There are no foodstuff application taught.

There is no teaching of equivalency for the silicas of the primary and secondary references. One having ordinary skill in the art would not expect the silicas of The Technical Bulletin to exhibit similar properties as those of the secondary references-Deller et al., Hazenzahl and the Press Release-since the taught applications are clearly different, *e.g.* Deller's granules are catalytic supports. The need for an equivalency teaching is suggested by, *e.g.*, BPAI opinion number 2009-009246, *supra*.

The substitution of one silica type for another appears to be based on an obvious to try rationale, which is not statutory obviousness. Thus, the *prima facie* case of obviousness must fail.

Thus, amended claim 1 patentably distinguishes thereover. As such, Applicants courteously solicit withdrawal of the rejection as to claim 1 and claim 24, dependent thereon.

CONCLUSION

All of the stated grounds of rejections have been properly traversed, accommodated, or rendered moot. Therefore it is respectfully requested that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for all allowance.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, in the event that additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. 1.136(a), and any fees required therefore are hereby authorized to be charged to Deposit Account No. 02-4300, Attorney Docket No. 032301.440.

Respectfully submitted,

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